IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

WP(C).No. 7893 of 2007(M)

PETITIONER:

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1. GIBY GEORGE,
   NELLICKAL HOUSE, DEVALOKAM P.O.,
   KOTTAYAM.

2. PRINCY GEORGE, W/O.GIBY GEORGE,
   NELLICKAL HOUSE, DEVALOKAM P.O.,
   KOTTAYAM.

BY ADV. SRI.C.S.SUNIL

RESPONDENTS:

THE MARRIAGE OFFICER (PRINCIPAL
DISTRICT REGISTRAR), OFFICE OF THE DISTRICT
REGISTRAR, KOTTAYAM.

BY G.P.SRI.I.V.PRAMOD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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W.P.(C)No.7893 of 2007

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Dated this the 8th day of March, 2007.

JUDGMENT

Petitioners married on 1-3-2007. The second petitioner is abroad. Her employer has offered to provide employment to the first petitioner, who is now unemployed. For such purpose, the petitioners need appropriate certificate of marriage for transit. Under the aforesaid peculiar facts and circumstances, following the decision of the Division of this Court in **John Lukose v. District Registrar (2007 (1) KLT 247)**, I am inclined to direct the registration of the marriage under the Special Marriage Act, 1954, hereinafter referred to as the `Act', for short, without insisting on the statutory notice period of thirty days.

2. However, the learned Government Pleader urges that the marriage itself was on 1-3-2007 and the application for registration of the marriage under the Act ought to be after a cohabitation of a minimum period of thirty days after the marriage. He makes

this argument on the basis of Clause (f) of Section 52.

3. For the purpose of considering this contention, Section 15 of the Act has to be adverted to. It provides that any marriage celebrated before or after the commencement of the Act other than one solemnized ceremoniously under the Special Marriage Act 1872 or under the Special Marriage Act, 1954 may be registered under Chapter III by a marriage officer in the territories to which the Act extends, if conditions (a) to (f) under Section 15 are satisfied. Clause (a) provides that a ceremony of marriage should have been performed between the parties and they have been living together as husband and wife ever since. Clause (b) provides that neither party should have more than one spouse living at the time of registration. Clause (c)provides that neither party should be an idiot or a lunatic at the time of registration. Clause (d) provides that the parties should have completed the age of twenty-one years at the time of registration. Clause (e) provides that the parties should not be

within the degrees of prohibited relationship. The controversy on the basis of the argument is on Clause (f) which reads as follows:

> "The parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage."
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> (emphasis supplied)

3. As already noticed, Clause (a) provides that a ceremonial marriage should have been performed between the parties and they should have been living together as husband and wife ever since. This means that the parties to the ceremonial marriage ought to have been living as husband and wife ever since such marriage. If it were the intention of the Legislature to provide a certain gestation period of such cohabitation after the ceremonial marriage, but before the application for registration, it would have found expression in Clause (a) itself. I say so because Clause (f), as quoted

above, has been made without reference to any cohabitation of the couple following the ceremonial marriage. The argument of the learned Government Pleader appears to be that since Section 15 would come into play only in relation to couples who have undergone a ceremonial marriage, the period of residence within the jurisdiction of the Marriage Officer in terms of Clause (f) of Section 15 should also be referable to the period after the ceremonial marriage. A close reading of Clause (f) of Section 15 does not provide such a situation. A plain reading of that provision only enjoins that the parties to the marriage, who entered into the matrimony by a ceremonial marriage were residents within the jurisdiction of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made for registration of the marriage. Therefore, a ceremonial marriage between persons who were residing within the jurisdiction of the Special Marriage Officer can be registered even if such ceremonial marriage was not

before 30 days of the application for registration.

4. In the aforesaid circumstances, having regard to the facts of the case, as already noticed, it is directed that the application for registration of the marriage of the petitioners shall be received and acted upon, if it is otherwise in order, and the marriage shall be registered without awaiting the period of thirty days and such registration shall be published in the notice board of the first respondent and will be liable to cancellation on any just and legal objections in accordance with law, after hearing the petitioners. The marriage certificate will also be duly issued following the registration on or before 12-3-2007.

Writ Petition is disposed of in the above terms.

Thottathil B.Radhakrishnan,
Judge.

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